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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

LINDA L. CLEMENT,) No. CV-08-2009-PHX-GMS

Plaintiff,) ORDER

VS.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

No. CV-08-2009-PHX-GMS

ORDER

Pending before the Court is the appeal of Plaintiff Linda L. Clement, which challenges the Social Security Administration's decision to deny benefits. (Dkt. # 16.) For the reasons set forth below, the Court affirms that decision.

BACKGROUND

21 On April 13, 2005, Plaintiff applied for disability insurance benefits, alleging a
22 disability onset date of July 13, 2004. (R. at 47.) Plaintiff's date last insured ("DLI") for
23 disability insurance benefits was September 30, 2005. (*Id.*) Plaintiff's claim was denied both
24 initially and upon reconsideration. (R. at 43-46; R. at 39-41.) Plaintiff then appealed to an
25 Administrative Law Judge ("ALJ"). (R. at 30.) The ALJ conducted a hearing on the matter
26 on December 6, 2006. (R. at 434-83.)

1 In evaluating whether Plaintiff was disabled, the ALJ undertook the five-step
2 sequential evaluation for determining disability.¹ (R. at 12-21.) At step one, the ALJ
3 determined that Plaintiff had not engaged in substantial gainful activity since the alleged
4 onset date. (R. at 17.) At step two, the ALJ determined that Plaintiff suffered from the
5 severe impairments of “disorders of the back and neck, arthritis, mild obesity with recent
6 improvement, and hypothyroidism, currently stable.” (*Id.*) At step three, the ALJ determined
7 that none of these impairments, either alone or in combination, met or equaled any of the
8 Social Security Administration’s listed impairments. (*Id.*)

9 At that point, the ALJ made a determination of Plaintiff’s residual functional capacity
10 (“RFC”).² The ALJ concluded that Plaintiff could perform a range of light work. (*Id.*) The
11 ALJ concluded that Plaintiff could sit, stand, and walk for six hours per day, and had the
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13 ¹The five-step sequential evaluation of disability is set out in 20 C.F.R. § 404.1520
14 (governing disability insurance benefits) and 20 C.F.R. § 416.920 (governing supplemental
15 security income benefits). Under the test:

16 A claimant must be found disabled if she proves: (1) that she is
17 not presently engaged in a substantial gainful activity[,] (2) that
18 her disability is severe, and (3) that her impairment meets or
19 equals one of the specific impairments described in the
20 regulations. If the impairment does not meet or equal one of the
21 specific impairments described in the regulations, the claimant
22 can still establish a *prima facie* case of disability by proving at
23 step four that in addition to the first two requirements, she is not
24 able to perform any work that she has done in the past. Once the
25 claimant establishes a *prima facie* case, the burden of proof
26 shifts to the agency at step five to demonstrate that the claimant
27 can perform a significant number of other jobs in the national
28 economy. This step-five determination is made on the basis of
four factors: the claimant’s residual functional capacity, age,
work experience and education.

Hoopai v. Astrue, 499 F.3d 1071, 1074-75 (9th Cir. 2007) (internal citations and quotations
omitted).

²RFC is the most a claimant can do despite the limitations caused by his impairments.
See S.S.R. 96-8p (July 2, 1996).

1 capability to lift and carry ten pounds frequently and twenty pounds occasionally. (*Id.*) The
2 ALJ further concluded that Plaintiff had postural limitations of no more than occasional
3 bending, crouching, crawling, or climbing; needed to avoid concentrations of dust, fumes,
4 and gases; and needed to avoid temperature extremes. (*Id.*) The ALJ thus determined at step
5 four that Plaintiff retained the RFC to perform her past relevant work as a real estate agent,
6 real estate broker, real estate instructor, and administrative assistant. (R. at 21.) The ALJ
7 did not reach step five. (*See id.*) Given this analysis, the ALJ concluded that Plaintiff was
8 not disabled. (*Id.*)

9 The Appeals Council declined to review the decision. (R. at 4-6.) Plaintiff filed the
10 complaint underlying this action on November 3, 2008, seeking this Court's review of the
11 ALJ's denial of benefits.³ (Dkt. # 1.) The case is now fully briefed before this Court. (Dkt.
12 ## 16, 18, 19.)

DISCUSSION

14 || I. Standard of Review

15 A reviewing federal court will only address the issues raised by the claimant in the
16 appeal from the ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).
17 A federal court may set aside a denial of disability benefits only if that denial is either
18 unsupported by substantial evidence or based on legal error. *Thomas v. Barnhart*, 278 F.3d
19 947, 954 (9th Cir. 2002). Substantial evidence is "more than a scintilla but less than a
20 preponderance." *Id.* (quotation omitted). "Substantial evidence is relevant evidence which,
21 considering the record as a whole, a reasonable person might accept as adequate to support
22 a conclusion." *Id.* (quotation omitted).

23 However, the ALJ is responsible for resolving conflicts in testimony, determining
24 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.

26 ³Plaintiff was authorized to file this action by 42 U.S.C. § 405(g) (2004) (“Any
27 individual, after any final decision of the Commissioner of Social Security made after a
28 hearing to which he was a party . . . may obtain a review of such decision by a civil action
. . . .”).

1 1995). “When the evidence before the ALJ is subject to more than one rational
2 interpretation, we must defer to the ALJ’s conclusion.” *Batson v. Comm’r of Soc. Sec.*
3 *Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004). This is so because “[t]he [ALJ] and not the
4 reviewing court must resolve conflicts in evidence, and if the evidence can support either
5 outcome, the court may not substitute its judgment for that of the ALJ.” *Matney v. Sullivan*,
6 981 F.2d 1016, 1019 (9th Cir. 1992) (citations omitted).

7 **II. Analysis**

8 Plaintiff argues that the ALJ erred by: (A) improperly rejecting the opinion of Dr.
9 Bhalla, a treating physician (Dkt. # 16 at 16-22), (B) improperly rejecting Plaintiff’s
10 subjective complaint testimony (*id.* at 22-24), and (C) not awarding benefits based on the
11 vocational expert’s testimony (*id.* at 24-25). The Court will address each argument in turn.

12 **A. Treating Physician Testimony**

13 Plaintiff’s first argument is that the ALJ improperly rejected the opinion of her
14 treating physician, Dr. Bhalla. “The medical opinion of a claimant’s treating physician is
15 entitled to ‘special weight.’” *Rodriguez v. Bowen*, 876 F.2d 759, 761 (9th Cir. 1989)
16 (quoting *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988)). Such an opinion is entitled
17 to controlling weight if it is “well-supported by medically acceptable clinical and laboratory
18 diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case
19 record.” 20 C.F.R. § 404.1527(d)(2); 20 C.F.R. § 416.927(d)(2). If the opinion is not well-
20 supported by such techniques, or is inconsistent with other substantial evidence in the record,
21 then the opinion will be weighed in light of several factors: (1) the length of the treatment
22 relationship and the frequency of examination, (2) the nature and extent of the treatment
23 relationship, (3) supportability by explanation and reference to relevant evidence, (4)
24 consistency with the record as a whole, (5) specialization, and (6) any other factors tending
25 to support or contradict the opinion. 20 C.F.R. § 404.1527(d); 20 C.F.R. § 416.927(d).

26 If the treating physician’s opinion is not contradicted by the opinion of another doctor,
27 it may be rejected only for clear and convincing reasons supported by substantial evidence
28 in the record. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Likewise, the treating

1 physician's ultimate conclusions may only be rejected for clear and convincing reasons
2 supported by substantial evidence. *Id.* If the treating physician's opinion is contradicted by
3 the opinion of another physician, it may be rejected upon specific and legitimate reasons
4 supported by substantial evidence in the record. *Id.* "The ALJ can meet this burden by
5 setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
6 stating his interpretation thereof, and making findings." *Embrey*, 849 F.2d at 421 (quotation
7 omitted).

8 An examining physician's opinion can, in and of itself, constitute substantial evidence
9 to reject the opinion of a treating physician if the examining physician's opinion is based on
10 independent clinical findings that differ from the findings of the treating physician. *Orn*, 495
11 F.3d at 632. If the examining physician relies on the same findings as the treating physician,
12 and differs only in his conclusions, then the examining physician's opinion cannot inherently
13 be substantial evidence. *Id.* However, the "substantial evidence" threshold necessary to
14 reject the opinion of a treating physician can be reached by the opinion of even a non-
15 examining physician in concert with an abundance of evidence in the record. *See Lester*, 81
16 F.3d at 831.

17 In this case, Dr. Bhalla completed a residual functional capacity questionnaire
18 discussing Plaintiff's impairments. (R. at 424-28.) In the questionnaire, Dr. Bhalla
19 diagnosed Plaintiff as having rheumatoid arthritis, osteoarthritis of the hand, and
20 degenerative disc disease, with a prognosis of "chronic disease." (R. at 424.) Dr. Bhalla
21 provided that Plaintiff's symptoms included pain, swelling of the joints, and stiffness, and
22 that the pain was "severe during flare ups," which are unpredictable. (*Id.*) Dr. Bhalla listed
23 joint warmth, redness, swelling, and a reduced range of motion in the hands as Plaintiff's
24 positive objective signs. (*Id.*) Dr. Bhalla further stated that, although Plaintiff's experience
25 of pain "often" was severe enough to interfere with her attention and concentration, Plaintiff
26 was still "capable of [working in] low stress jobs." (R. at 425.) Dr. Bhalla then estimated
27 that Plaintiff could sit for one hour at a time before needing to stand up, could stand for
28 twenty minutes at a time before needing to sit down, and could sit and stand in total for less

1 than two hours in an eight-hour workday. (R. at 426.) Dr. Bhalla opined that Plaintiff could
2 lift and carry up to twenty pounds occasionally, but nevertheless had significant limitations
3 in repetitive reaching, handling, and fingering. (R. at 427-28.) Dr. Bhalla concluded by
4 estimating that Plaintiff would miss more than four days of work per month as a result of her
5 impairments. (R. at 428.)

6 The ALJ explained Dr. Bhalla's opinion in great detail in his decision order,
7 recapitulating essentially all of what appears in the RFC questionnaire. (R. at 20.) The ALJ
8 gave Dr. Bhalla's opinion some weight, but he ultimately concluded that it was not entitled
9 to greater weight than that of other physicians. (*Id.*) The ALJ so reasoned because Dr.
10 Bhalla failed to substantiate the functional restrictions he assigned to Plaintiff, because Dr.
11 Bhalla's own treatment notes were inconsistent with the limitations he imposed on Plaintiff's
12 ability to use her fingers, and because the greater objective record did not elsewhere suggest
13 such limitations. (R. at 20-21.)

14 The ALJ's reasoning in this regard was not erroneous. The RFC questionnaire asked
15 Dr. Bhalla to explain how long during a workday Plaintiff would be able to use her hands,
16 fingers, and arms in various activities, but Dr. Bhalla declined to provide such supporting
17 information. (R. at 428.) Dr. Bhalla also declined to provide requested specifying
18 information on whether Plaintiff would need to take breaks or how far Plaintiff could walk
19 without experiencing severe pain. (R. at 426-27.) Finally, when asked to "explain the
20 reasons for [his] conclusion" regarding how much work stress Plaintiff could tolerate, Dr.
21 Bhalla again provided no explanation. (R. at 425.) The RFC questionnaire is otherwise just
22 a checklist with little to no explanation even requested. (*See R. at 424-28.*) The ALJ's
23 conclusion that Dr. Bhalla "failed to substantiate the functional restrictions he assigned
24 [Plaintiff]" (R. at 20) is therefore reasonable.

25 The record likewise supports the ALJ's conclusion that the limited treatment notes
26 from Dr. Bhalla were inconsistent with the limitations he provided in the RFC questionnaire.
27 As the ALJ discussed, although Plaintiff reported joint swelling, Dr. Bhalla's treatment notes
28 report that there was no swelling of the fingers and joints. (R. at 401, 402, 404, 405; *see also*

1 R. at 407-09, 413-15.) The notes also report the general absence of symptoms, including
2 neurological symptoms, and that the neurological system was “normal.” (*See id.*) Thus, the
3 ALJ’s conclusion that the treatment notes did not fully support Dr. Bhalla’s conclusion in the
4 RFC questionnaire was reasonable.

5 So too was it reasonable for the ALJ to conclude that the opinions of other doctors
6 were entitled to greater weight than Dr. Bhalla’s opinion. (R. at 20.) For instance, the ALJ
7 gave greater weight to the opinion of Dr. Fernando, a state agency examining physician. (*See*
8 *id.*) Dr. Fernando attested that Plaintiff could lift up to twenty pounds occasionally and up
9 to ten pounds frequently, and could stand and/or walk for six to eight hours in an eight-hour
10 workday. (R. at 130.) Dr. Fernando further explained that Plaintiff had no limitations in
11 sitting, but did need to alternate sitting and standing every forty-five minutes. (R. at 131.)
12 Dr. Fernando also noted that Plaintiff had limitations in climbing, balancing, stooping,
13 kneeling, crouching, and crawling, but he specifically observed that Plaintiff had no
14 restrictions in reaching, handling, fingering, or feeling. (*Id.*) Dr. Fernando supported his
15 conclusions with a detailed examination report, including a questionnaire specifically
16 devoted to clarifying Plaintiff’s manipulative abilities (reaching, handling, fingering, and
17 feeling). (R. at 120-29.)

18 Dr. Fernando’s opinion was essentially the same as the opinions of the state agency
19 reviewing physicians. (*See* R. at 110-18, 176-83.) They each testified that Plaintiff could
20 lift and carry up to twenty pounds occasionally and ten pounds frequently, that she could
21 stand and/or walk for about six hours in an eight-hour workday, and that she could sit for
22 about six hours in an eight-hour workday. (R. at 112, 177.) The state agency physicians
23 further testified that Plaintiff had no limitations in her upper extremities, and both provided
24 explanatory statements for their conclusions. (R. at 112-13, 177.) Although both provided
25 some limitations on Plaintiff’s ability to climb, balance, stoop, kneel, crouch, and crawl (R.
26 at 113, 178), both likewise concluded that Plaintiff’s manipulative abilities were either
27 unlimited (R. at 114) or only somewhat limited (R. at 179).

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1 Based on these factors, the ALJ had a proper basis on which to reject the opinion of
2 Dr. Bhalla. *See Connett v. Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003) (holding that it is
3 appropriate to reject the opinion of a treating physician if it is inconsistent with other doctors'
4 opinions, other evidence in the record, and the doctor's own treatment notes); *Meanel v.*
5 *Apfel*, 172 F.3d 1111, 1113-14 (9th Cir. 1999) (affirming the ALJ's rejection of a treating
6 physician's opinion because that opinion was "conclusory and unsubstantiated by relevant
7 medical documentation") (quoting *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995)).
8 The ALJ therefore did not err in affording Dr. Bhalla's opinion less weight than the opinions
9 of the other physicians.

10 **B. Subjective Complaint Testimony**

11 Plaintiff next argues that the ALJ erred by rejecting her subjective complaint
12 testimony. "Pain of sufficient severity caused by a medically diagnosed 'anatomical,
13 physiological, or psychological abnormality' may provide the basis for determining that a
14 claimant is disabled." *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) (quoting
15 42 U.S.C. § 423(d)(5)(A) (2006)). "Once a claimant produces objective medical evidence
16 of an underlying impairment, an ALJ may not reject a claimant's subjective complaints based
17 solely on [the] lack of objective medical evidence to fully corroborate the alleged severity
18 of [those symptoms]." *Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir. 2004). Rather, the
19 ALJ must determine whether the impairment or combination of impairments "could
20 reasonably be expected to produce [the] pain or other symptoms." *Batson*, 359 F.3d at 1196
21 (quotation omitted). "[U]nless an ALJ makes a finding of malingering based on affirmative
22 evidence thereof, he or she may only find [the claimant] not credible by making specific
23 findings as to credibility and stating clear and convincing reasons for each." *Robbins v. Soc.*
24 *Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006). The ALJ may consider "at least" the
25 following factors when weighing the claimant's credibility:

26 [the] claimant's reputation for truthfulness, inconsistencies
27 either in [the] claimant's testimony or between her testimony
28 and her conduct, [the] claimant's daily activities, her work
record, and testimony from physicians and third parties

1 concerning the nature, severity, and effect of the symptoms of
2 which [the] claimant complains.

3 Thomas, 278 F.3d at 958-59 (internal quotations omitted). The ALJ's findings must be
4 "sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily discredit
5 [the] claimant's testimony." *Id.* at 958.

6 In this case, Plaintiff testified that she suffered from pain and swelling in her legs and
7 knees, specifically the left leg and knee (R. at 456), stiffness and aches in her back (R. at
8 457), and pain in her hands making it difficult to grip and squeeze (R. at 461). Plaintiff
9 testified that her pain interferes with a variety of different activities, including work-related
10 activities, and that her medication dulls her concentration. (R. at 455-70.)

11 The ALJ thoroughly summarized Plaintiff's subjective complaint testimony. (R. at
12 18.) The ALJ agreed that Plaintiff's medically determinable impairments could reasonably
13 be expected to produce her alleged symptoms, but the ALJ concluded that Plaintiff's
14 statements concerning the intensity, persistence, and limiting effects of those symptoms were
15 not entirely credible. (*Id.*) The ALJ based this conclusion on the following facts: (1)
16 Plaintiff had been able to tolerate a trip involving frequently getting into and out of a vehicle
17 and climbing steps (R. at 145); (2) Plaintiff made use of only over-the-counter pain
18 medication like Advil and Ibuprofen (R. at 145, 412); (3) Plaintiff's knee complaints were
19 assessed as "mild" and Plaintiff's treating physician did not prescribe medication for them
20 (R. at 140); (4) after just two physical therapy sessions, Plaintiff reported complete relief of
21 thoracic/lumbar pain (R. at 393); (5) Plaintiff has made three long-distance trips from
22 Arizona to Pennsylvania and back since July of 2004, both driving and flying (R. at 470); (6)
23 Plaintiff does water aerobics two hours every day and occasionally volunteers as an assistant
24 for additional water exercise classes (R. at 78, 471); (7) Plaintiff drives a car and a golf cart
25 regularly (R. at 471); (8) Plaintiff was sewing, crocheting, using small tools, and cutting glass
26 in 2004-05, despite her allegations of disabling hand pain (R. at 78, 452-54); (9) Plaintiff is
27 independent at home, does light cleaning, fixes her own meals, and uses the computer (R. at
28 76, 472-73); and (10) Plaintiff requires no ambulatory devices, despite her allegations of

1 disabling lower back, leg, and sciatic pain (R. at 471). The ALJ also relied on a variety of
2 medical evidence regarding Plaintiff's impairments. (R. at 19-20.) For instance, the ALJ
3 pointed out that Plaintiff's mild median wrist neuropathies, as well as her neck complaints,
4 improved with a short course of physical therapy. (R. at 356-59.) Plaintiff was
5 recommended for only non-surgical treatment (R. at 269), and although various MRIs and
6 x-rays did show degenerative joint disease of the lumbar spine, progress notes indicated
7 normal gait and station, including heel/toe and tandem walking, normal alignment and
8 mobility of the head and neck, and intact neurological sensation (R. at 289).

9 Plaintiff disputes three of the ALJ's points, arguing that: (1) her use of over-the-
10 counter pain medication was simply part of a doctor-directed, conservative course of
11 treatment; (2) Plaintiff had pain during the three trips to Pennsylvania and she stopped to
12 stretch frequently; and (3) daily water aerobics, while a conservative treatment, is less
13 vigorous than other forms of exercise, and thus is actually an indication that Plaintiff is
14 disabled. Plaintiff does not challenge the notion that an ALJ may rely on such evidence in
15 evaluating subjective complaint testimony. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1040
16 (9th Cir. 2008) (affirming the ALJ's rejection of subjective complaint testimony where the
17 ALJ interpreted evidence of long-distance travel as being inconsistent with claims of
18 disabling pain); *Osenbrock v. Apfel*, 240 F.3d 1157, 1165-66 (9th Cir. 2001) (affirming the
19 ALJ's rejection of the claimant's subjective complaint testimony and relying on the fact that
20 "the claimant has not been using [] strong Codeine or Morphine based analgesics that are
21 commonly prescribed for severe and unremitting pain"); *Johnson*, 60 F.3d at 1434 (holding
22 that a claimant's being "prescribed only 'conservative treatment'" suggested "a lower level
23 of both pain and functional limitation," and thus affirming the ALJ's rejection of subjective
24 complaint testimony). Plaintiff's argument, rather, is simply that the ALJ came to the wrong
25 conclusion from the evidence. However, the ALJ's interpretation of the evidence was
26 reasonable; taking long-distance trips, doing water aerobics daily, and using conservative
27 pain medication all can be taken to suggest that Plaintiff is not totally disabled by her pain.
28 Because the ALJ's conclusions on these factors were reasonable, and because Plaintiff has

1 not challenged the other factors on which the ALJ relied, this Court will not second-guess
2 the ALJ's determination. *See Andrews*, 53 F.3d at 1039; *Batson*, 359 F.3d at 1198; *Matney*,
3 981 F.2d at 1019. There is no error on this point.

4 **C. Vocational Expert's Testimony**

5 Plaintiff argues that, had the ALJ credited Dr. Bhalla's opinion and Plaintiff's
6 subjective complaint testimony, the vocational expert's testimony would require a finding
7 of disability. Because the ALJ did not err in declining to credit the evidence to which
8 Plaintiff refers, there is no error on this point. *See Rollins v. Massanari*, 261 F.3d 853, 857
9 (9th Cir. 2001) (holding that an ALJ did not err in excluding properly-rejected limitations
10 from hypothetical questions posed to the vocational expert).

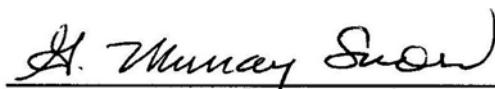
11 **CONCLUSION**

12 The ALJ made no error of law and there is substantial evidence to support the ALJ's
13 denial of benefits.

14 **IT IS THEREFORE ORDERED** that the ALJ's decision is **AFFIRMED**.

15 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to
16 **TERMINATE** this action.

17 DATED this 9th day of June, 2009.

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20 G. Murray Snow
United States District Judge

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